

## •••••Financial Requirement Concerns

### Sanitary Landfills in Puerto Rico

EQB currently interprets their regulations as not requiring financial assurance for closure, postclosure activities and corrective actions for municipally-owned landfills. This is inconsistent with Federal regulations.

- **Current JCA/EQB Regulations:**

REGLA 567 APLICABILIDAD Y EFECTIVIDAD DE LOS REQUISITOS  
FINANCIEROS

- B. Esta Parte establece requisitos adicionales aplicables a dueños u operadores de sistemas de relleno sanitario. Quedan exentas del cumplimiento con esta Parte las entidades del Gobierno de Puerto Rico que sean dueñas y operadoras o de los Estados Unidos de América.
- C. Las disposiciones de esta Parte entraron en vigor el 9 de abril de 1994.

- **RCB's Translation:**

RULE 567 APPLICABILITY AND EFFECTIVENESS OF THE FINANCIAL  
REQUIREMENTS

- B. This Part establishes additional requirements applicable to owners and operators of sanitary landfill systems. The entities of the Government of Puerto Rico or of the United States of America, that are owners and operators, are exempt from compliance with this Part.
- C. The provisions of this Part went into effect April 9, 1994.

- **Original Translation provided to EPA (from Program Approval):**

RULE 901 - APPLICABILITY AND EFFECTIVE DATE

- 1. This Chapter establishes additional requirements that apply to owners and operators of sanitary landfill facilities. Entities belonging to the Central Government of the Commonwealth of Puerto Rico or the United States of America are exempt from complying with this Chapter.
- 2. The provisions of this Chapter will take effect on April 9, 1994.

- **EQB's Interpretation (From EQB letter to EPA ARA):**

The financial requirements for closure, postclosure activities and corrective actions are not part of the draft order because our Rule 567 of the Regulations for Non-Hazardous Solid Waste exclude government entities from its application.

- **40 C.F.R. Part 258\_criteria for Municipal Solid Waste Landfills**

Subpart G\_Financial Assurance Criteria

Sec. 258.70 Applicability and effective date.

(a) The requirements of this section apply to owners and operators of all MSWLF units, except owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

- **References**

<http://www.epa.gov/epaoswer/non-hw/muncpl/finance/>

**Financial Assurance for Municipal Solid Waste Landfills, November 17, 1996**

**Assurance Mechanisms Finalized for Local Government Owners of Municipal Solid Waste Landfills**

**Background**

The Environmental Protection Agency (EPA) promulgated the Solid Waste Disposal Criteria on October 9, 1991. These Criteria require owners and operators of municipal solid waste landfills (MSWLFs) to demonstrate financial responsibility for the costs of closure, post-closure, and corrective action associated with their facilities. The financial assurance requirements were intended to ensure that adequate funds are available to cover these costs. The Criteria provide a number of financial methods that owners and operators can use to demonstrate financial assurance.

**Action**

The Local Government Financial Test was proposed December 27, 1993 in response to comments from local governments requesting flexibility in meeting the financial assurance requirements of the Criteria. The Test allows local governments to meet their financial assurance obligations for closure, post-closure care and corrective action pursuant to the Criteria by demonstrating their financial strength. The effective date for these financial assurance requirements is now April 9, 1997 (small, dry, or remote landfills have until October 9, 1997 to comply).

A local government can make this demonstration by showing that it has issued a general obligation bond for which it received an investment grade rating. Alternatively, it can pass ratios that address a local government's cash holdings and debt obligations relative to the size of its budget. In addition, a local government cannot have an excessive operating deficit for each of the last two years and those obligations that are assured cannot be too large relative to the local government's total budget. This latter approach which contrasts with a fixed requirement that would, for example, allow only local governments with a minimum of \$10 million in revenues to use the financial test was adopted to allow all local governments, however small, to use the financial test for at least a portion of their environmental obligations.

Local governments must report annually on whether they continue to meet the conditions of the test and inform the public that they are using the test. Local governments that pass the financial test can also assure obligations for other landfill owners and operators if they choose to do so. We estimate that 91 percent of local governments can use their financial strength to assure at least part of their obligations and 54 percent can assure all of their obligations using the local government financial test.

This rule gives local governments more flexibility to meet the financial assurance requirements of the Municipal Solid Waste Landfill Criteria. Those local governments who are eligible to exercise this option can realize substantial cost savings in complying with the Criteria. This rule also gives state directors the authority to waive the financial assurance requirements for up to 12 months for good cause in specific cases where the April 9, 1997 effective date does not provide sufficient time to comply with these requirements and where such a waiver will not adversely affect human health and the environment. This is consistent with the Administrator's priorities to give flexibility to the regulated community in meeting our regulations and to eliminate unnecessary expense in providing environmental protection.

